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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Comments on the conceptual framework for the review of the constitutional and juridical status of the Non-Self-Governing Territories and on progress in the implementation of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples

Working paper submitted by Saint Lucia

1. The delegation of Saint Lucia wishes to take note of the conceptual framework contained in document A/AC.109/1999/20 which it regards as an important contribution to the debate on modalities to ensure a successful decolonization process in this penultimate year of the International Decade for the Eradication of Colonialism.

2. A number of ideas were expressed in the document upon which the Saint Lucia delegation would wish to comment, from its perspective of a small island developing country that gained full self-government through independence, and bearing in mind that the vast majority of the remaining Non-Self-Governing Territories are small islands in the Caribbean and Pacific.

3. In this regard, the Saint Lucia delegation wishes to offer some comments on a number of the observations and recommendations contained in the document.

Charter of the United Nations, resolutions and legal opinions

4. Note is taken of the reference, in paragraph 3 of document A/AC.109/1999/20, of the reference to resolution 742 (VIII) of 27 November 1953, by which the General Assembly approved a list of "factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government".

5. Note is also taken of the emphasis in the conceptual framework paper to paragraph 4 of the resolution, which states, *inter alia*, that "each concrete case should be considered and decided upon in the light of the particular circumstances of that case and taking into account the right of self-determination of peoples".

6. Consideration should also be given to other important provisions of resolution 742 (VIII), including paragraph 6, in which the General Assembly "considers that the manner in which Territories referred to in Chapter XI of the Charter

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can become fully self-governing is primarily through the attainment of independence, although *it is recognized that self-government can also be achieved by association with another State or group of States if this is done freely and on the basis of absolute equality*" (emphasis added).

7. This prerequisite of "absolute equality" was further refined in the approval by the General Assembly seven years later in resolution 1541 (XV) of 15 December 1960, in which the Assembly defined the legitimate political status options of independence, free association and integration on this very basis of "absolute equality". In that resolution, the Assembly emphasized that the option of integration must be "on the basis of *complete equality* [emphasis added] between the people of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated". In resolution 1541 (XV) the Assembly refers directly to such individual rights as those of "equal status ... [with] equal rights of opportunities for representation and effective participation at all [political] levels". The status of free association also has important references on the basis of equality that address the right of the people to "determine [their] internal constitution without outside interference".

8. In resolution 742 (VIII), the General Assembly "reaffirm[ed] that for a Territory to be deemed self-governing ... it is essential that its people shall have attained a full measure of self-government". Further, in the annex to the resolution, which lists the factors indicative of the attainment of independence or of other separate systems of self-government, the requirement that there must be "freedom from control or interference ... in respect of the internal government (legislative, executive, judiciary and administration of the Territory)" is made clear.

9. The conceptual framework paper argues, in paragraph 7, that the "type of [political] status is even broader" than the three legitimate options contained in resolution 1541 (XV) "if one takes into account General Assembly resolution 2625 (XXV) of 24 October 1970, which States that the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right to self-determination by that people".

10. It is to be emphasized that the process of developing "modes of implementing the right to self-determination" as referred to in resolution 2625 (XXV) does not constitute having achieved self-determination, which can only be attained through the three legitimate options defined in resolution 1541 (XV), and repeatedly reaffirmed by the General Assembly. Thus, the emergence of any status short of the equalities contained in the three legitimate options may be a positive step — a mode, a method or a procedure — but in no way does it constitute the attainment of full self-government. The Assembly was aware of this fact, as it never made reference to resolution 2625 (XXV) again, after it had been adopted in 1970, save the vague references to "all other resolutions and decisions on decolonization". Meanwhile, resolution 1541 (XV) has been repeatedly reaffirmed in General Assembly resolutions, most recently, in resolutions on the small Territories that have been adopted each year of the International Decade for the Eradication of Colonialism.[1]

11. Reference was made in paragraph 8 of the paper to a 1975 advisory opinion of the International Court of Justice on the issue of Western Sahara that argued that "in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given Territory" in reference to an act of self-determination as "those instances were based either on a consideration that a certain population did not constitute a 'people' entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances".

12. Such "special circumstances" are not applicable to the small island Territories under consideration by the Special Committee since democratic structures and administrative systems are the norm and are routinely utilized in conducting popular consultations, including general elections.

13. The paper took note in paragraph 9 of several of the proposals contained in the Plan of Action for the International Decade for the Eradication of Colonialism,[2] including the need for United Nations cooperation with the administering Powers to keep the people of the Territories fully informed of the political status options available to them, and the need for comprehensive reviews of the situation in each of the Non-Self-Governing Territories in order to arrange for the holding of self-determination referendums before the end of 1999.

14. The potential for resumed administering Power cooperation with the Special Committee is always welcomed, especially as it relates to the development of political education programmes to heighten the awareness of the people of the political options available to them. In this connection, the reference in the paper to the need for comprehensive reviews in each Territory prior to the conduct of referendums is also supported. It should be emphasized that the call for political education programmes in the Territories has been a major feature of General Assembly resolutions on the small Territories for decades, but these provisions have not been implemented. Similarly the conduct

of comprehensive reviews is one of the several activities of the Plan of Action for the International Decade for the Eradication of Colonialism that has also not been carried out, and is an important prerequisite to ascertaining the views of the people concerned.

15. The paper puts forth in paragraph 10 the opinion of the Under-Secretary-General for Legal Affairs that "the General Assembly did not set out specific modalities or mechanisms which would apply on a general basis to all Non-Self-Governing Territories for the exercise of their right to self-determination" and that "the General Assembly has acted on a case-by-case basis in determining whether the modalities for the attainment of self-government by the peoples concerned satisfied the requirements of the Charter and of the relevant Assembly resolutions".

16. It is important to note that the General Assembly, as recently as its fifty-third session, repeated the longstanding paragraph in resolution 53/67 A of 3 December 1998 on the small island Territories, which it "reaffirm[ed] that it is ultimately for the people of the Territories themselves to determine freely their future political status in accordance with the relevant provision of the Charter, the Declaration and the relevant resolutions of the General Assembly, and in that connection calls upon the administering Powers, in cooperation with the territorial Governments, to facilitate programmes of political education in the Territories in order to foster an awareness among the people of their right to self-determination".

17. In the same resolution, the General Assembly called for "reports on the wishes and aspirations of the peoples of the Territories regarding their future political status as expressed in fair and free referendums and other forms of popular consultation, as well as the results of any informed and democratic processes consistent with practice under the Charter that indicate the clear and freely expressed wish of the people to change the existing status of the Territories".

18. Taking into account resolution 53/67 A and its predecessor resolutions on the small Territories, it is clear that while exact modalities for determining the views of the people are not defined, a number of options are given with the qualification that they indicate "the clear and freely expressed wish of the people". Conclusions of the regional seminars have further defined the method of ascertaining the views of the people on their political status choices, dismissing the use of general elections that are contested on economic rather than political status issues, and advocating the use of referendums.

Guidelines for action based on General Assembly resolutions and past practice

19. The delegation of Saint Lucia concurs with the view expressed in paragraph 17 of the paper that "since the initiation in 1990 of the International Decade, no Non-Self-Governing Territory on the agenda of the Special Committee has exercised its right to self-determination". It is also important to note, in that connection, that no such act of self-determination is envisaged in any of the Territories, with the exception of the processes under way in New Caledonia and East Timor.

20. The delegation also supports the view that the lack of cooperation from some administering Powers continues to be a problem, and that the Special Committee needs to take a more practical approach to the situation in the Territories. It also must be emphasized that longstanding standards of self-determination consistently reaffirmed in resolutions 1514 (XV) and 1541 (XV) remain the applicable guidelines for self-determination of the small island Non-Self-Governing Territories, and no Territory should be considered for removal from the United Nations list without first having met the parameters of full internal self-government through a legitimate act of self-determination pursuant to the relevant resolutions and decisions of the General Assembly.

21. The delegation also favours the call in paragraph 20 (a) for consultations between "interested parties and/or the action undertaken by the Secretary-General". It supports this idea, as long as those interested parties include the representatives of the peoples of the Territories themselves. Several seminars of the Special Committee have called for an expert group to be formed among the people of the Territories to advise the Secretary-General on the most suitable steps to facilitate the self-determination process. This recommendation of the regional seminars among other proposals from the people concerned needs to be implemented as a matter of urgency.

22. The delegation also concurs with the expression in paragraph 20 (c) that the constitutional status "should be the result of the exercise of the right to self-determination by the people" through the "most appropriate" modality, the organization of a referendum. The delegation maintains that such referendums should only be one of the options that provide full political equality. It would not be in conformity with the Charter, relevant human rights conventions and the relevant resolutions of the General Assembly for the people of the Territories to enter into a process that would effectively make permanent the dependency relationships.

23. There should be a reassessment of the perception that there is some other appropriate way to ascertain the views of the people other than a democratic electoral process, including the method of a "negotiation or agreement between the main organs of the Territory and the administering Power".

24. Such arrangements for basic administrative changes in the territorial relationship by either negotiation or consultation between elected leaders are routine, but such contacts do not constitute an act of self-determination involving the people of the Territory concerned, as the unilateral authority to make such administrative changes remains with the administering Power.

25. Similarly, the idea that the executive or legislative bodies of a Territory can determine for their people by legislation or executive edict that either their political status will change, or the present dependency arrangement has become legitimate, would be inconsistent with the lengthy history of participatory democracy in the small island Territories.

26. For the same reasons, the conclusion in paragraph 20 (e) of the paper that selected resolutions had indicated that "it was not formally required that the relevant people should freely express their will" would not be applicable to the small island Territories, which indeed, wish to "formally express their will" on their future political advancement.

Conclusions and recommendations

27. The conceptual paper calls in paragraph 21 for closer cooperation between the Special Committee and the administering Power "in the period left in order to proceed to the examination and when appropriate, to decide on the status of those Territories that remain on its agenda, in particular the 12 small Non-Self-Governing Territories".

28. Support for closer cooperation with the administering Power is always useful, but the delegation is of the view that the "period left" in the International Decade may not be sufficient to address the political, economic and constitutional development needs of the small Territories — especially since the studies called for in the plan of action were never carried out, and the Member States have insufficient information to review the situation. Regarding the matter of the Special Committee and the administering Power "decid[ing] on the status of those Territories that remain on its agenda", it appears that the main element that is missing is the participation of the people of the Territories themselves — it is supposed to be their decision, not the Special Committee's or the administering Powers' decision.

29. Similarly, the spectre of the "Special Committee and the ... administering Power ... decid[ing] on the procedure to follow with respect to the process and certification of self-determination of each of the Non-Self-Governing Territories" (para. 23) is equally exclusionary since it does not include any role for the representatives of the Territories to participate in this certification process.

Concluding thoughts

30. The conceptual framework document contains some interesting ideas on how the United Nations can complete its work on decolonization. In regard to the small island Territories, it should be emphasized that only those modalities that are consistent with the full participation of the people concerned through their democratic institutions are applicable, and only those political options that would give full political equality would grant the full measure of self-government consistently called for by the General Assembly in its relevant resolutions. These parameters have served as the basis for the self-determination of other small island developing countries that have gained a "full measure of self-government" through integration with full political rights, free association with mutual consent and independence.

31. Until the existent unequal dependency arrangements that remain inconsistent with full political equality are addressed, there will be a need for continued oversight by the United Nations, and for the development of a proactive United Nations approach in the time remaining in the present decade and into the next decade, when it is hoped that the required studies and analyses on the status of the individual Territories will be implemented in order to provide a basis for Member States to make informed decisions on the fully self-governing nature of the remaining small island Non-Self-Governing Territories.

Notes

[1] See General Assembly resolutions 46/68 of 11 December 1991, 47/27 of 25 November 1992, 48/51 of 10 December 1993, 49/46 of 9 December 1994 and 50/38 of 6 December 1995.

[2] A/46/634/Rev.1, annex.